United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLEES AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,253

JAY PAUL SHELTON, APPELLANT 103

v.

ROBERT J. BARRETT, SUPERINTENDENT OF METROPOLITAN POLICE, WASHINGTON, D. C., AND CURTIS REID, RESIDENT SUPERINTENDENT, DISTRICT OF COLUMBIA JAIL, APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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United States Court of Appeals
for the District of Columbia
Circuit

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ROBERT J. BARRETT, SUPERINTENDENT OF METROPOLITAN POLICE, WASHINGTON, D. C., AND CURTIS REID, RESIDENT SUPERINTENDENT, DISTRICT OF COLUMBIA JAIL, APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

COUNTERSTATEMENT OF THE CASE

On November 16, 1948, appellant filed a petition for a declaratory judgment in the District Court, naming as respondents Robert J. Barrett, Superintendent of the District of Columbia Police, Curtis Reid, Superintendent of the District of Columbia Jail, and F. Howard Barrett, Clerk of the Court of General Sessions in New York City (App. 1). The petition requested that the District Court declare invalid a bench warrant for appellant's arrest issued by the Court of General Sessions in New York City, and that respondents Robert J. Barrett and Curtis Reid be restrained from further entertaining the warrant against appellant (App. 5).

The allegations of the petition may briefly be summarized as follows:

That appellant was indicted for forgery and grand larceny in a state court in New York on February 1, 1946, pleaded not guilty on February 5, and was remanded to prison to await trial (App. 1); that, although he was brought from the prison to the courthouse eight times during the course of the next two months, he was never tried, but was on each occasion "propositioned" by the prosecuting attorney to plead guilty in return for a reduction of the charge (App. 2-3); that he refused and repeatedly demanded trial (App. 3); that on April 2, 1946, the prosecuting attorney informed the court that appellant was wanted by the F.B.I. on charges in several states and the F.B.I. was fearful that the witnesses would no longer be available if appellant was convicted and sentenced on the pending New York charge (App. 1-2); that the prosecutor therefore recommended that appellant be discharged on his own recognizance, that he be turned over to the F.B.I., and that a bench warrant be issued to follow him and be lodged wherever he might be incarcerated (App. 1-2); that the court granted the prosecutor's motion (App. 2); that appellant was thereafter removed to Richmond, Virginia, where he was tried in the United States District Court and on May 26, 1946, was sentenced to imprisonment for three years (App. 2); that he was then removed to the District of Columbia where on February 12, 1947, he was convicted and sentenced to imprisonment for an additional period of one to five years, under which sentence he is now confined in the District of Columbia Jail (App. 2); that on December 9, 1947, appellant invited the New York state prosecuting authorities to regain custody of him and dispose of the case against him there, but received no reply to his letter (App. 4); that he then retained an attorney who contacted the state authorities, but was told in July 1948 that they would take no action until appellant had served four years of his federal sentences (App. 4); that the bench warrant issued by the New York court is on file with appellee Robert J. Barrett, Superintendent of Police, and has been noted as a detainer against appellant by appellee Reid, Superintendent of the Jail (App. 1); and that appellant will be deprived of any chance for parole on the federal sentences as long as the New York warrant is outstanding against him (App. 4). The petition requested that the warrant be declared invalid on the grounds that appellant had been denied his constitutional right to a speedy trial on the New York indictment, and that New York had waived jurisdiction by surrendering him to the federal authorities, (App. 2-5).

The court appointed Nicholas J. Chase as counsel to represent appellant, who was proceeding in forma pauperis (App. 15). Service was never made upon F. Howard Barrett, Clerk of the Court of General Sessions in New York, and he never appeared in the action. Appellees Reid and Robert J. Barrett moved to dismiss the action on the grounds that there was no case or controversy between the parties, and that the petition failed to state a claim upon which relief could be granted (App. 11). The motion to dismiss was granted on March 25, 1949, and the present appeal followed (App. 16).

STATUTES INVOLVED

The Declaratory Judgment Act, 28 U.S.C. 2201, provides in pertinent part:

> In a case of actual controversy within its jurisdiction, * * * any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not furthèr relief is or could be sought. * * *

18 U.S.C. 3182, formerly 18 U.S. 662, provides:

> Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the execu-

> tive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

D. C. Code (1940), § 23-401, provides in pertinent part:

> In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the Chief Justice of the District Court of the United States for the District of Columbia shall cause to be apprehended and delivered up such fugitive from justice who shall be found within the District, in the same manner and under the same regulations as the executive authorities of the several States are required to do by the provisions of [18 U.S.C. 3182] * * *.

D. C. Code (1940), § 23-403, provides:

> Whenever any person shall be found within the District of Columbia charged with any offense committed in any state, territory, or other possession of the United States, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the governor of such state, territory, or possession, any judge of the police court of the District of Columbia, may, upon complaint on oath or affirmation of any credible witness, setting forth the offense, that such person is a fugitive from justice, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the police court, to answer such complaint. * * *

SUMMARY OF ARGUMENT

I

There must be a controversy between the parties to justify a declaratory judgment. Appellant contends that he has a controversy with the local authorities because he can challenge extradition to New York by habeas corpus here in the District on the grounds (1) that New York waived jurisdiction over his person, (2) that he is not a "fugitive" from New York since he left the state involuntarily, and (3) that the State of New York denied him a speedy trial. But the scope of habeas corpus to review extradition proceedings is strictly limited. The habeas corpus court may only inquire into the regularity of the demanding papers, the fact of a charge of crime in the demanding state, the identity of the person demanded, and his presence in the demanding state at the time the crime is alleged to have been committed. The points appellant proposes to raise do not come within the scope of such examination. Consequently, the petition for a declaratory judgment failed to state a controversy with the local authorities.

II

Even if the three issues presented by appellant could be raised in a proceeding to review an extradition warrant, the facts alleged were insufficient to disclose a basis for relief by habeas corpus. (1) One who is present in a state on the day a crime is alleged to have been committed by him, and who thereafter leaves the state, is a "fugitive" regardless of the manner of his departure. (2) When charges are pending in two separate states against a defendant, the one which holds him may relinquish his person to the other, without waiving its right to bring him to trial ultimately. (3) The allegations of the petition do not show on their face that appellant was deprived of due process by denial of a speedy trial.

ARGUMENT

I

The Petition Failed to Disclose a Controversy Between the Parties Capable of Adjudication in an Action for a Declaratory Judgment

This is an action for a declaratory judgment. There must, therefore, be an actual controversy between the parties. 28 U. S. C. 2201 (*supra*, p. 3); *Aetna Life Ins. Co.*

v. *Haworth,* 300 U. S. 227, 239-241. If the facts alleged in the petition fail to disclose an actual controversy between appellant and the two District of Columbia officials, Robert Barrett and Reid, the District Court was correct in dismissing the petition.

The petition alleged that the New York state court's bench warrant was invalid (1) because the State of New York had waived jurisdiction over appellant by surrendering him to the federal authorities, (2) because appellant had left the State of New York involuntarily and was therefore not a "fugitive" within the meaning of the extradition statute, and (3) because the State of New York had violated his constitutional rights by depriving him of a speedy trial. Obviously the petition stated a controversy between appellant and the authorities of the State of New York.[1] Appellant argues (Br. 5-6, 8-9) that there also exists a controversy between himself and the District of Columbia authorities on the ground that he has the right to raise these same issues by way of habeas corpus here in the District before he is extradited to the State of New York. We will assume for the purposes of argument that appellees Barrett and Reid would be proper parties respondent in any habeas corpus proceeding resulting from an attempt to extradite appellant to New York. But we submit that the petition failed to disclose a controversy between appellant and the local authorities, because the scope of habeas corpus to review extradition proceedings is strictly limited and the issues presented by the petition fall outside the permissible range of such review.

Interstate extradition is controlled by federal law, and the authority of the asylum state to arrest a fugitive and turn him over to officials of the demanding state rests upon the Constitution and the applicable federal statutes. *South Carolina* v. *Bailey*, 289 U. S. 412, 419-420; *United States ex rel. McCline* v. *Meyering*, 75 F. 2d 716, 717 (C. A. 7). The Constitution provides that a person, charged with a felony in one state and having fled therefrom to another, shall be delivered up by the second state upon demand made by the Governor of the first.[2] In furtherance of this provision[3] Congress enacted a statute in 1793 which is now to be found as amended in 18 U. S. C. 3182 (*supra*, p. 3). That statute provides that if the Governor of a state demands any person as a fugitive from justice and produces a certified copy of an indictment or affidavit charging such person with a felony, the Governor of the asylum state shall arrest the person and deliver him to the authorities of the demanding state. The language of the constitutional provision and the statute make it plain that the Governor of the asylum state has jurisdiction to arrest, detain, and hand over a fugitive, if there is a proper demand for him, if it appears from the demanding papers that a crime has been charged, if the person arrested is the person charged, and if that person was present in the demanding state at the time the crime is alleged to have occurred.[4] These elements being present the Governor of the asylum state should issue his warrant for arrest of the fugitive, and he need not, as in cases of international extradition, determine whether there is probable cause to believe the fugitive guilty. See 18 U. S. C. 3184. So long as the fugitive thereafter remains in custody within the asylum state the legality of his confinement depends upon the legality of the proceedings in the asylum state, since the process of the demanding state cannot cross state lines. He remains in custody, not by virtue of the indictment, but by virtue of the extradition warrant issued by the Governor of the asylum state.

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[1] There is no merit to appellant's contention (Br. 5) that the District of Columbia authorities acted as agents of the State of New York. The concept of agency involves control by the principal over his agent, an element clearly lacking here. In extradition proceedings the demanding and asylum states deal with each other as separate sovereignties. Their relations are governed by comity in international extradition, and by the force of federal law in interstate extradition. In no sense can the officials of one of the two states be subject to control by the officials of the other.

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[2] Article IV, Section 2, Paragraph 2, provides: "A Person Charged in any State with Treason, Felony or other Crime, who shall flee from Justice and be found in another State, shall, on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

[3] *Cf. Roberts* v. *Reilly*, 116 U.S. 80, 94; and *Hyatt* v. *Corkran*, 188 U.S. 691, 708-709.

[4] As to this last element, see *Hyatt* v. *Corkran*, 188 U. S. 691; *Biddinger* v. *Comm'r. of Police*, 245 U. S. 128, 135; *Levy* v. *Splain*, 50 App. D. C. 31, 267 Fed. 333; *Young* v. *Matthews*, 174 F. 2d 35 (C.A. D.C.).

For the purposes of interstate extradition the District of Columbia is treated as a state. When a person found within the District is "charged" with an extraditable offense in another state, he may be arrested under a police court warrant and held pending the institution of extradition proceedings. See D. C. Code (1940), § 23-403 (*supra,* p. 4). When such proceedings are instituted by the demanding state the Chief Justice of the District Court is empowered to issue a warrant of extradition in the same manner as would the governor of an asylum state.[5] See D. C. Code (1940), § 23-401 (*supra,* p. 4).

As appellant points out, the remedy for one who desires to oppose extradition is by application for a writ of habeas corpus. Now the sole purpose of the writ of habeas corpus is to test the legality of the prisoner's detention, to determine whether the jailer has jurisdiction to continue to hold him in custody. As long as one who resists extradition remains within the asylum state the legality of his detention rests upon the propriety of the extradition warrant issued by the Governor of the asylum state. As we have shown above, (*supra,* p. 7) the scope of the question to be decided by that Governor before issuance of such a warrant is strictly limited by federal law. It follows that the scope of review of the extradition proceedings by habeas corpus is also strictly limited.

Thus the habeas corpus court may determine whether the demanding papers are in proper order,[6] whether it appears from them that a crime has been charged in the demanding state.[7] whether the person sought to be extradited is the person charged,[8] and whether he was present in the demanding state at the time the crime is alleged to have been committed.[9] But the habeas corpus court can go no further. It cannot inquire into the motives behind the institution of the extradition proceeding.[10] It cannot inquire into the question of guilt or innocence,[11] or into matters of defense such as insanity,[12] former jeopardy,[13] or the barring of prosecution by the statute of limitations.[14] Neither can it consider equitable considerations raised in bar of prosecution in the demanding state.[15] Finally it cannot examine issues touching upon the constitutional rights of the prisoner, such as the constitutionality of the statute under which he is charged,[16] or the prospect that he will not get a fair trial.[17] All these inquiries are blocked by the fact that jurisdiction to issue the extradition warrant depends solely under federal law upon whether the prisoner has been charged with a crime in the demanding state and was present there at the time that crime allegedly occurred.

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[5] The Chief Justice of the District Court acts in an executive, not in a judicial, capacity when passing on demands for extradition. *Lee Won Sing* v. *Cottone,* 74 App. D.C. 374, 377, 123 F. 2d 169.

[6] *Compton* v. *Alabama,* 214 U. S. 1; *Riley* v. *Colpoys,* 66 App. D.C. 116, 85 F. 2d 282; *Lee Won Sing* v. *Cottone,* 74 App. D.C. 374, 376-377, 123 F. 2d 169.

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[7] *Ex. parte Reggel*, 114 U.S. 642, 649-651; *In re Strauss*, 197 U.S. 324.

[8] *Lee Gim Bor* v. *Ferrari*, 55 F. 2d 86 (C.A. 1); *Raftery ex rel. Huie Fong* v. *Bligh*, 55 F. 2d 189, 195 (C.A. 1); *United States ex rel. Austin* v. *Williams*, 12 F. 2d 66 (C.A. 5); and *cf. Glucksman* v. *Henkel*, 221 U.S. 508, 513.

[9] *Hyatt* v. *Corkran*, 188 U.S. 691; *Biddinger* v. *Comm'r of Police*, 245 U.S. 128, 135; *Levy* v. *Splain*, 50 App. D.C. 31, 267 Fed. 333; *Young* v. *Matthews*, 174 F. 2d 35 (C.A. D.C.).

[10] *Pelley v. Colpoys*, 73 App. D.C. 395, 397, 122 F. 2d 12, *certiorari denied* 314 U. S. 622; *Person* v. *Morrow*, 108 F. 2d 832, 840 (C.A. 10).

[11] *South Carolina* v. *Bailey*, 289 U. S. 412, 420; *United States ex rel. Davey* v. *Superintendent*, 111 F. 2d 409 (C.A. 3), *cert. den.* 311 U.S. 662.

[12] *Drew* v. *Thaw*, 235 U.S. 432.

[13] *In re Bloch*, 87 Fed. 981, 984 (D. Ark.).

[14] *Biddinger* v. *Comm'r. of Police*, 245 U.S. 128, 134-135; *Pelley* v. *Colpoys, supra*.

[15] *Reed* v. *Colpoys*, 69 App. D.C. 163, 166, 99 F. 2d 396, *cert. den.* 305 U.S. 598.

[16] *Pearce* v. *Texas*, 155 U.S. 311; *Collins* v. *Traeger*, 27 F. 2d 842 (C.A. 9).

[17] *Hale* v. *Crawford*, 65 F. 2d 739, 741-744 (C.A. 1), *cert. den.* 290 U.S. 674; *United States ex rel. Brown* v. *Cooke*, 209 Fed. 607, dismissed 238 U.S. 613.

The points appellant proposes to raise by habeas corpus when extradition proceedings are begun, as stated in the petition for a declaratory judgment, are (1) that the State of New York waived jurisdiction to try him by turning him over to federal authorities; (2) that he is not a "fugitive" because he did not leave New York voluntarily; and (3) that he has been denied his constitutional right to a speedy trial by the State of New York. These points, we submit, obviously have nothing to do with the question whether appellant was "charged" with a crime in New York and whether he was present in New York on the day the offense was committed, and do not fall within the scope of any habeas corpus action that could be brought by appellant in the District of Columbia. Consequently, the petition for a declaratory judgment failed to disclose a case or controversy between the parties and was properly dismissed.

The Circuit Court of Appeals for the Third Circuit recently handed down a decision, referred to in appellant's brief (Br. 12-13, 14-15), which is in effect contrary to the position we have taken above. *Johnson* v. *Dye,* 175 F. 2d 250. In that case the State of Georgia sought to extradite Johnson from Pennsylvania as a convicted murderer. Johnson filed a petition for a writ of habeas corpus in the District Court for the Western District of Pennsylvania in which he alleged that the Georgia authorities had coerced witnesses into testifying against him, that he had been subjected to barbaric treatment by his Georgia jailors, and that he would be in danger of death by mob violence or at the hands of his jailors if returned to Georgia. The District Court, without consideration of the restrictions we have set forth above, granted a hearing, but dismissed the writ because the evidence failed to establish the first and third allegations of the petition, and because the allegation as to inhuman treatment subsequent to conviction did not afford a basis for relief by habeas corpus. *Johnson* v. *Dye,* 71 F. Supp. 262. But the Court of Appeals held that the latter allegation did set forth a violation of the due process clause of the Fourteenth Amendment and that the evidence established the truth of the allegation. The court, therefore, ordered Johnson discharged. The case is now pending before the Supreme Court on petition for certiorari.[18] From an examination of the opinion, the briefs in the Circuit Court of Appeals, and the record and petition filed in the Supreme Court, it would appear that the question of the special restrictions on the scope of habeas corpus in review of extradition proceedings was never called to the court's attention. We submit that the decision is clearly incorrect.

II

The Petition Failed To State a Cause of Action, in that It Failed To State Grounds for Relief by Writ of Habeas Corpus.

Even if the three arguments which appellant urged in his petition to show the invalidity of the New York bench warrant could be raised in a habeas corpus proceeding brought in the District of Columbia to review an extradition order, none of those arguments affords a valid ground for relief by habeas corpus.

1. *Appellant is a fugitive, even though he left New York involuntarily.*—Appellant contends (Br. 7, 9-10) that he is not subject to extradition to New York because he was taken out of that state against his will by the F.B.I., and hence cannot be said to have "fled." But it is settled law that a person charged with a crime, and who was present in the state at the time the crime was committed but left thereafter, is a fugitive regardless of the manner of his departure. In *Appleyard* v. *Massachusetts,* 203 U. S. 222, 227, the Supreme Court said:

> * * * So that the simple inquiry must be whether the person whose surrender is demanded is in fact a fugitive from justice, not whether he *consciously* fled from justice in order to avoid prosecution for the crime with which he is charged by the demanding state. A person charged by indictment or by affidavit before a magistrate with the commission within a state of a crime covered by its laws, and who, after the date of the com-

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[18] *Dye* v. *Johnson,* No. 332, this Term.

> mission of such crime, leaves the state,—no matter for what purpose or with what motive, nor under what belief,—becomes, from the time of such leaving, and within the meaning of the Constitution and the laws of the United States, a fugitive from justice, * * *.

See also *Bassing* v. *Cady,* 208 U. S. 386, 388; *Spencer* v. *Hamilton,* 12 F. 2d 976 (C.A. 10); *Barrett* v. *Bigger,* 57 App. D. C. 81, 17 F. 2d 669, *cert. den.* 274 U. S. 752; *People ex rel. McFadden* v. *Meyering,* 358 Ill. 442, 193 N. E. 475.

2. *The State of New York did not waive its right to try appellant by releasing him to the F.B.I.*—Appellant argues (Br. 7, 10-11) that the State of New York lost jurisdiction by surrendering him to federal authorities. At the time this occurred the State of New York had jurisdiction over the offense with which appellant was charged and it also had jurisdiction over his person. The State of New York did not give up its jurisdiction over the offense. It merely sacrificed its priority of jurisdiction over his person, and there is nothing to prevent it from recovering his person once his federal sentence has been completed. The cases cited by appellant are not in point. All involve situations in which the state having priority of jurisdiction surrendered the prisoner to a second state, and the contention was made that the first state had no right to waive its prior jurisdiction and that conviction in the second state was invalid.

3. *The allegations of the petition do not support the contention that appellant was denied a speedy trial.*—The petition alleges that appellant was indicted for forgery by the New York County Grand Jury on February 1, 1946, that he was arraigned on February 5, and that he was turned over to federal authorities on April 2, although he had during those two months made repeated demands that he be brought to trial. What constitutes a speedy trial is a matter which depends upon the circumstances of the particular case, and on the face of it a delay of two months in the trial of a felony charge in a New York County court cannot be considered a deprivation of due process under the Fourteenth Amendment.

Neither does the fact that appellant was removed to Richmond, Virginia, to stand trial in the federal court there, while the proceedings were still pending in New York, constitutes a denial of due process. A defendant cannot invoke the right to a speedy trial as between two charges against him in separate jurisdictions. *Beavers* v. *Haubert,* 198 U. S. 77.

The petition fails to allege that appellant served any further demands upon the New York authorities after he had been removed from the state. The petition asserts that he "invited" prosecution of the New York charge and that he retained an attorney to contact the state authorities. But there must be a demand for a speedy trial before the right becomes effective. *Pietch* v. *United States,* 110 F. 2d 817, 819 (C.A. 10), *cert den.*, 310 U. S. 648. Furthermore, even if there had been a demand it would be ineffective in a case of this nature, since a person confined in a federal prison has no right to an immediate trial on a charge pending against him in a state court. *Ex parte Schechtel,* 103 Colo. 77, 82 P. 2d 762; and see cases in Note, 118 A.L.R. 1037, 1046-1048.

CONCLUSION

It is respectfully submitted that the judgment dismissing the petition for a declaratory judgment should be affirmed.

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APPENDIX

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[2] Petition for Declaratory Judgment

Comes now the petitioner in proper person and petitions the Court to declare invalid and of no legal effect in this jurisdiction a bench warrant issued by the Court of General Sessions, New York County, New York (signed by F. Howard Barrett, Clerk, Court of General Sessions), dated April 5, 1946, wherein said Court seeks custody of petitioner in connection with Indictment 136-46. A copy of the Bench Warrant and the Indictment are attached hereto. The warrant is presently on file with Robert J. Barrett, Superintendent of Metropolitan Police, Washington, D. C. It has been noted against petitioner officially by Curtis Reid, Resident Superintendent, D. C. Jail, where petitioner is currently serving a local sentence. The warrant serves as a detainer against petitioner, and will presumably be executed by the Metropolitan Police (Fugitive Squad) when petitioner has completed his present sentence.

This Indictment was found by the New York County Grand Jury on February 1, 1946. Petitioner (who had been in custody in the Tombs Prison since January 7, 1946) was arraigned on the Indictment, and entered a plea of not guilty, [3] on February 5, 1946. Following this he was remanded to the Tombs Prison, ostensibly to await trial, where he remained continuously until April 12, 1946, at which time New York County Assistant District Attorney MacDonnell, in *ex parte* proceedings, made the following oral motion in the Court of General Sessions, Part 7:[1]

"Your Honor, this defendant was indicted by the Grand Jury of the County of New York on the 1st day of February, 1946, charged with the crime of forgery in the Second Degree. The indictment is predicated on a check made out in the name of Paul A. Barkle to the order of George W. Anderson in the amount of $760. It was presented by the defendant to the Manufacturers Trust Company at 79 Eighth Avenue on the 5th of January 1946 and the defendant obtained the amount of money I have stated. Mr. Shanklin of the FBI informed me that this defendant is wanted * * * in several states. * * * There are warrants filed in the Tombs Prison in each of the specified cases. * * * I now recommend to Your Honor that in view of the fact that Mr. Shanklin is afraid, in the event the defendant were convicted in this Court and sentenced, that his witnesses in the many cases that are pending against the defendant would not be available for trial, that the defendant Albert H. Bennett (Petitioner was indicted under this name) be discharged on his own recognizance in this instant case, that he be turned over to Mr. Shanklin, agent for the FBI, and that as regards this instant case a bench warrant be issued."

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[1] Copy of Certified transcript of these proceedings is attached hereto.

The Court, without affording petitioner any opportunity to protest or oppose this highly irregular procedure, granted the motion, stating:

"Motion granted. The defendant is discharged on his own recognizance; the bench warrant to follow and be lodged wherever he is incarcerated in any other state."

Thereafter petitioner was removed to Richmond, Virginia, where he received a federal sentence of three years on May 26, 1946. He was then brought to Washington, [4] D.C., where he received a sentence of one to five years on February 12, 1947, consecutive to the prior sentence. Petitioner is now in the D.C. Jail, serving the latter sentence.

Argument

The Sixth Amendment to the United States Constitution provides that an accused is entitled to a "speedy" trial. The Fifth and Fourteenth Amendments guarantee procedural due process of law. Petitioner has been denied both.

Moreover, the State of New York relinquished and lost jurisdiction over petitioner by releasing him to federal authorities for transfer to another state. Interstate extradition is provided and permitted by the United States Constitution only in cases where an accused has "fled" the jurisdiction where the crime was committed. (Article IV, Section 2, United States Constitution.) In this case petitioner did not "flee" from New York, but was forcibly taken from the jurisdiction of the State of New York against his will, without having first been afforded a trial for the offense for which he stood indicted.

While petitioner was in custody in the Tombs Prison on this charge (almost three months) the State of New York had ample time to try this case or otherwise dispose of it. As shown on the reverse side of page one of the Indictment (Trial and Motion Calendar) petitioner was taken from the Tombs to Court eight times during this three month period. Actually, however, petitioner never reached the Courtroom at any time subsequent to his arraignment, but was interviewed in the prisoners' "bull pen" adjacent to the Courtroom, by the Assistant District Attorney, who on each occasion "propositioned" petitioner to plead guilty in return for a reduction of the charge. On the last occasion he offered to reduce the charge to petit larceny, and promised a suspended sentence, if petitioner would plead guilty. Petitioner refused and repeatedly demanded a trial. The Assistant District Attorney, having been unsuccessful in all attempts to threaten, persuade, or cajole petitioner, finally instigated the *ex parte* proceedings of April 2, 1946, [5] in which he culpably persuaded the Court to take the resulting unjust action.

Apparently petitioner was turned over to federal authorities on the supposition that the federal government's witnesses might not be available against petitioner at a later date. If there is any merit to such a proposition, then it works both ways. Witnesses who were available to petitioner at that time in New York are not available now, hence he could not possibly secure a fair trial at this late date. While the State of New York has ample facilities and resources to obtain and preserve its evidence, petitioner has been in custody all the while, unable to secure depositions or statements from persons who could have established his innocence while events were fresh in their minds; hence in this case the unnecessary, unjustified lapse of time operates to the benefit of the prosecution and against the petitioner. Due process of law does not countenance such a procedure. Chief Judge Bolitha Laws, in dismissing the so-called sedition case (*United States* v. *McWilliams, et al,* Wash. Law Rep. 74, 1166) made an observation which has application here:

> "Where it appears * * * that the defendants, because of long delays granted over their objections, cannot obtain a fair trial, the Court should exercise its discretion and deny prosecution. In all long delayed cases witnesses become scattered, some not accessible, particularly to defendants without funds, and the memories of witnesses as to events occurring many years ago lack clarity. It is for these reasons, among others, that the Constitution of the United States requires a speedy trial and that the Congress of the United States has imposed a statute of limitations to prevent long delayed prosecutions."

It is obvious that the State of New York had, and has, no intention of ever bringing petitioner to trial, and that the bench warrant, or detainer, is held over his head solely for whatever nuisance value it may have, and principally to preclude his making parole. (Petitioner's application for parole was in fact rejected in May 1948 for this reason.) [6] Following petitioner's last conviction and sentence (February 1947) there was nothing to prevent the State of New York from regaining custody of him for trial through the offices of the Federal Bureau of Prisons or by means of a writ of habeas corpus ad prosequendum; but New York authorities have availed themselves of neither means. Petitioner not only did not oppose, but actually invited, the New York authorities to regain custody of him and dispose of this case. Petitioner made such an invitation in a letter to the New York County District Attorney dated December 9, 1947, stating, in part, as follows:

> "To secure an early disposition of the case, I am willing to co-operate wholeheartedly with your office, and I will follow any reasonable suggestion you care to make."

Petitioner never received a reply to this letter. Thereafter he retained T. Brooke Howard, an attorney, to contact the New York prosecuting authorities regarding the case. In July 1948 the District Attorney for New York County wrote Mr. Howard, stating that his office would take action only after petitioner had served "at least four years of his federal sentences." In effect this will deprive petitioner of any chance for parole for at least four years, although by statute he would be eligible after two years. Thus the New York prosecuting authorities have in effect usurped the judicial and legislative function of prescribing the term of a convicted person's confinement.

If New York authorities had a substantial case against petitioner they would have tried him when they had the opportunity, rather than making one ridiculous proposition after another to induce a guilty plea. Their stated reason for releasing him to federal authorities for trial elsewhere was not valid, because in the event petitioner had been tried and convicted in New York the federal authorities in other jurisdictions could still have obtained custody of him for trial purposes without waiting for him to complete any sentence he might have received in New York. A prison is not a sanctuary, and there have been thousands of cases [7] where persons serving state sentences have been taken to other jurisdictions for federal prosecution by means of the writ of habeas corpus ad prosequendum. There was no justification whatsoever for the Court of General Sessions to deny petitioner a speedy trial on the flimsy pretext that his conviction in New York would jeopardize federal prosecutions elsewhere.

At best the detainer system is a vicious one. Many federal judges have expressed repugnance to it. A prisoner with a detainer against him is usually denied parole and is unable to formulate constructive plans for the future. Such conditions are not conducive to rehabilitation, hence are detrimental to society as well as the individual and his family. The detainer system permits arbitrary exercise of punitive measures by prosecuting officials. While it may not be feasible to outlaw the system altogether, the Courts should serve notice that vengeful and unscrupulous employment of detainers will not be tolerated. The instant case is particularly flagrant, since New York prosecuting authorities had petitioner in their custody over two months following his arraignment on the indictment, and witnesses for both sides were available all the while.

For over two and one half years petitioner has been ready and anxious to face trial, but the point has now been reached, in view of the unwarranted lapse of time, where he can no longer obtain a fair trial. Witnesses are scattered, their recollections poor. Petitioner therefore opposes extradition to New York and seeks in this petition to have the bench warrant presently held against him as a detainer declared null, void, and of no legal effect in this jurisdiction.

Wherefore, the premises considered, petitioner prays that this Court will enter a declaratory judgment against the several respondents, decreeing the aforementioned bench warrant to be invalid and of no legal effect in this jurisdiction; and particularly enjoining the respondents Robert J. Barrett and Curtis Reid to disregard said bench warrant and to entertain it against the petitioner no more.
[8] "Petition to Proceed *in forma pauperis* and Motion to Appoint Counsel" is attached hereto and is by reference incorporated herein.

[9] (COPY OF INDICTMENT)

COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK

July 26, 1948.

I certify that the annexed is a copy of indictment and endorsement sheet now on file in the Clerk's Office, and that the same has been compared by me with the original and is a correct transcript therefrom, and of the whole of said original.

(S) F. HOWARD BARRETT,
Clerk of Court.

[Seal]

COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK

Indictment No. 136-46

PEOPLE

vs.

ALBERT H. BENNETT

1/17/46 NOTICE OF APPEARANCE—Filed by Louis Kaye, 135 Broadway, Telephone Bo. 9-8554.

Part 7, April 2, 1946: On recommendation of the District Attorney (orally in open court) discharged on own recognizance. (See Stenographer's minutes—Louis Frank, stenog.) (Returned to C.P. on warrants) B.W. to be lodged with Mr. Shanklin of FBI ADA MacDonnell.

JOHN A. MULLEN,
J.C.G.S.

4/5/46 BW mailed to Gordon Shanklin, FBI Foley Sq., N. Y.

Trial and Motion Calendar

Part 7, Feb. 19, 1946
Part 7, Feb. 21, 1946
Part 7, Feb. 26, 1946
Part 7, Mar. 6, 1946
Part 7, Mar. 11, 1946
Part 7, Mar. 18, 1946
Part 7, Mar. 23, 1946
Part 7, Mar. 25, 1946
Part 7, Apr. 2, 1946

[10] Court of General Sessions, County of New York: The people of the State of New York against Albert H. Bennett, Defendant.

The Grand Jury of the County of New York, by this indictment, accuse the above named defendant of the crime of Forgery in the Second Degree, committed as follows:

The defendant, in the County of New York, on or about January 5, 1946, with intent to defraud, forged an instrument and writing, of which the following is a copy:

MANUFACTURERS TRUST COMPANY 57
79 Eighth Avenue 1-30

New York, 12/31/45.

Pay to the order of George W. Anderson..........$760.00
Seven Hundred Sixty 00/100 Dollars.
No. ——————

(S) PAUL R. BARKLE.

(The following "Teller's Stamp" appears on the face of the check:)

"Manufacturers Trust Co., 79 8th Ave, New York; Jan. 5, 1946; 9"

(The back of the check endorsed as follows:)

(S) GEORGE W. ANDERSON
(S) PAUL R. BARKLE

SECOND COUNT:

And the grand jury aforesaid, by this indictment, further accuse said defendant of the crime of Forgery in the Second Degree, committed as follows:

Said defendant, in the County of New York, on or about January 5, 1946, with intent to defraud, uttered, offered, disposed of and put off as true, and had in his possession with intent so to do, the forged instrument and writing set forth in the first count of this indictment, on the back of which said forged instrument and writing, there were then the forged endorsements set forth in the first count of this indictment to which reference is hereby made, the defendant then knowing the same to be forged.

[11] Third Count:

And the Grand Jury aforesaid, by this indictment, further accuse said defendant of the crime of Grand Larceny in the First Degree, committed as follows:

Said defendant, in the County of New York, on or about January 5, 1946, with intent to deprive and defraud another of property, and of the use and benefit thereof, and to appropriate the same to his own use, and to the use of someone other than the true owner, stole property owned by Paul R. Barkle and Manufacturers Trust Company, having an aggregate value of $760.00, to wit, currency of the United States of America.

Said theft was effected by means of false and fraudulent representations and pretenses made by the said defendant to Robert W. Wille, an employee of Manufacturers Trust Company, namely, that the instrument and writing set forth in the first count of this indictment to which reference is hereby made, was a good and valid check and order for the payment of money, that the signature "Paul R. Barkle" appearing as maker on the face of the check was the true and valid signature of Paul R. Barkle, that the endorsements "George W. Anderson" and "Paul R. Barkle" appearing on said check were the true and valid signatures of George W. Anderson and Paul R. Barkle, that said defendant was George W. Anderson and entitled to the proceeds of said check.

Said representations and pretenses were known by the defendant to be fraudulent and false at the time they were made.

In fact, said instrument and writing was not a good and valid check and order for the payment of money, the signature "Paul R. Barkle" appearing as maker was not the true and valid signature of Paul R. Barkle, said signature being a forgery, the endorsements "George W. Anderson" and "Paul R. Barkle" appearing on said check were not the true and valid signatures of George W. Anderson and Paul R. Barkle, each of said signatures being a forgery, said defendant was not George W. Anderson and was entitled to no part of the proceeds of said check.

All of the acts and transactions alleged in each of the counts of this indictment are connected together and constitute parts of a common scheme and plan.

[12] *Copy of Bench Warrant*

COURT OF GENERAL SESSIONS, COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,
against
ALBERT H. BENNETT

BENCH WARRANT FOR A FELONY

Issued April 5th, 1946.

The officer executing this process will make his return to the Court forthwith.

COUNTY OF NEW YORK, ss:

In the name of the People of the State of New York: To any peace officer in this State: An indictment having been found on the 1st day of February 1946, in the Court of General Sessions of the County of New York, charging Albert H. Bennett (alias) Jay Paul Shelton with the crime of Forgery, Second Degree you are therefore commanded forthwith to arrest the above named Albert H. Bennett and bring him before that Court to answer the indictment; or if the Court have adjourned for the term, that you deliver him into the custody of the Warden of the City Prison of the City of New York, in the Borough of Manhattan of the said City.

Dated at the Borough of Manhattan in the City of New York, the 5th day of April, 1946.

By order of the Court

/s/ F. HOWARD BARRETT,
Clerk of Court.

Ord. No. 136-46.

[13] (Copy of Proceedings of April 2, 1946.)

COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK:

I certify that the annexed is a copy of the minutes of proceedings of the defendant's discharge on his own recognizance now on file in the Clerk's Office, and that the same has been compard by me with the original and is a correct transcript therefrom, and of the whole of said original.

/s/ F. HOWARD BARRETT,
(seal) *Clerk of Court.*

Court of General Sessions of the County of New York, Part 7.

Indictment 136-46.

THE PEOPLE OF THE STATE OF NEW YORK,
against
ALBERT H. BENNETT

Before Hon. John A. Mullen.

New York, April 2, 1946.

On indictment for forgery, 2nd degree, and grand larceny, 1st degree.

Indictment filed February 1, 1946.

Appearances: For the People: John L. MacDonnell, Bernard Alderman and Arnold Bauman, Esqs., Assistant District Attorneys.

(For the defendant)—(No Appearance)

LOUIS RAYE

(The case of The People against Albert H. Bennett is called by the Clerk on the trial calendar.)

MR. MACDONNELL: Your Honor, this defendant was indicted by the Grand Jury of the County of New York on the 1st day of February, 1946, charged with the crime of forgery in the 2nd degree. The indictment is predicated on a check made out in the name of Paul A. Barkle to the order of George W. Anderson in the amount of $760. It was presented by the defendant to the Manufacturers Trust Company at 79 Eighth Avenue on the 5th of January, 1946, and the defendant obtained the amount of money I have stated.

Mr. Shanklin of the FBI informed me that this defendant is wanted for a series of more serious crimes in several states—Virginia, Washington and Arizona being among them. There are warrants filed in the Tombs Prison in each of the specified cases, and Inspector Caffrey of the Post Office Department informed me that he would like to see the defendant released to the FBI to answer the warrants that are filed against him. Whatever matters he has against the defendant he will waive until some future date.

I have conferred with Mr. Sarafite and I now recommend to Your Honor that in view of the fact that Mr. Shanklin is afraid, in the event the defendant were convicted in this court and sentenced, that his witnesses in the many cases that are pending against the defendant would not be available for trial, that the defendant Albert H. Bennett be discharged on his own recognizance in this instant case, that he be turned over to Mr. Shanklin, agent for the FBI, and [14] that as regards this instant indictment a bench warrant be issued.

THE COURT: Motion granted. The defendant is discharged on his own recognizance; the bench warrant to follow and be lodged wherever he is incarcerated in any other state.

* * * * * * *

[20] Filed December 6, 1948, Harry M. Hull, Clerk.

Motion to Dismiss

The respondents, Robert J. Barrett and Curtis Reid move the Court as follows:

1. To dismiss the action on the ground that the Court lacks jurisdiction because no case or controversy exists between petitioner and aforementioned respondents.

2. To dismiss the action because the petition fails to state a claim against respondents upon which relief can be granted.

* * * * * * *

[23] Filed December 10, 1948, Harry M. Hull, Clerk.

Motion to Dismiss

Appears now the defendant, Curtis Reid, by George Morris Fay, United States Attorney, and moves the Court as follows:

1. To dismiss the complaint on the grounds that it fails to state a claim upon which relief may be granted.

[24] Filed December 14, 1948, Harry M. Hull, Clerk.

Opposition to Motion to Dismiss

Petitioner opposes the Motion To Dismiss which was filed December 6, 1948, on behalf of the respondents Robert Barrett and Curtis Reid, by the Corporation Counsel for the District of Columbia.

I.

(a) The Motion to Dismiss is based upon an incorrect statement of petitioner's claim. Said motion states: "The substance of petitioner's request to have the bench warrant declared null and void is that the State of New York in not allowing petitioner a 'speedy trial,' thereby denied rights and privileges under the Sixth and Fourteenth Amendments of the United States Constitution and that his removal from New York by Federal authorities to stand trial in Richmond, Virginia, although *indictments* were pending against him in the State of New York, was an *illegal action* and forfeited any jurisdiction that New York might have to issue a warrant for a subsequent arrest and return in extradition proceedings." (Underscoring supplied by petitioner.)

(b) The implication that *indictments* (plural) are involved is incorrect. There was, and is, only one indictment figuring in this case, and that is the indictment on which [25] the New York bench warrant is based (Indictment No. 136-46). There has never been any other indictment against petitioner in the State of New York.

(c) The complaint in this case did not allege, as claimed by the respondents' attorney, the Corporation Counsel, that New York committed an *illegal action* in releasing him without first affording him a trial: the allegation was that New York could release him, if it chose; but that in so doing it *relinquished and lost jurisdiction over petitioner insofar as extradition on this particular indictment is concerned.* Said jurisdiction having been relinquished and lost by the State of New York as aforesaid, it would be an illegal act for the respondents to detain or extradite the petitioner on the basis of that indictment; and that is the *illegal action* which petitioner seeks to prevent by this suit.

II

(a) The Corporation Counsel's claim that this Court lacks jurisdiction because no "case or controversy" exists between petitioner and respondents Robert Barrett and Reid is without merit.[1] The Corporation Counsel does not deny that a "case or controversy" exists between the petitioner and the State of New York (i.e., Respondent No. One, F. Howard Barrett, Clerk, Court of General Sessions); nor does he deny that his clients Robert Barrett and Reid are acting, or contemplate acting, as agents or representatives of the State of New York in this matter. The Corporation Counsel points out that neither Robert Barrett nor Reid would have the power to "execute" a bench warrant of a foreign jurisdiction, but he does not deny that Robert Barrett and Reid will at some future date cause a complaint to be sworn out on the basis of said bench warrant, and that they will detain petitioner for that purpose on the basis of that warrant. In a technical or grammatical sense the [26] terminology of the complaint was perhaps incorrect in the use of the word "execute,"[1] but the meaning was clear, that the respondents Robert Barrett and Reid contemplate the future detention of petitioner on the basis of the New York bench warrant and Indictment #136-46, on which the bench warrant is based. For the Corporation Counsel to argue otherwise is an idle play on words, since the method employed by these respondents in the apprehension, detention and extradition of alleged fugitives is well known and the court can take judicial notice of same. Suffice it is to say that petitioner has in his possession a notification from the Record Clerk of the D. C. Jail, advising petitioner, on behalf of the respondent Reid, as follows: "This is to advise you that this office is in receipt of a detainer from the Metropolitan Police Department, Washington, D. C., in favor of F. Howard Barrett, Clerk, Court of General Sessions, County of New York, New York, charging you with Forgery. This detainer will be placed against your record as of this date."

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[1] The Corporation Counsel cited Article II, Section 1 of the United States Constitution as authority for the requirement that a "case or controversy" must exist. The section cited provides for the election of the President of the United States. Apparently the intended reference was to Article III, Sections 1 and 2 of the United States Constitution, defining certain "cases or controversies" to which the judicial power of the United States shall extend.

(b) Rule 57, Federal Rules of Civil Procedure, and note thereto, requires that "all parties having an interest therein (i.e., an interest in any Declaratory Judgment sought) or adversely affected must be made parties or cited." Petitioner seeks by this action to preclude his future apprehension and detention on the New York Bench Warrant and Indictment, and since the respondents Robert Barrett and Reid do not deny they intend to cause, or assist in causing, petitioner's detention thereon, their claim that "no case or controversy exists" is frivolous.

(c) Article III, Section 2 of the United States Constitution confers jurisdiction on this Court in controversies "between a State and citizens of another State." The instant action clearly falls within the purview of this provision, notwithstanding Sec. 23-403 D. C. Code 1940 (cited by the Corporation Counsel) which confers jurisdiction in extradition proceedings upon the Municipal Court for the District of Columbia. The jurisdiction of this Court is conferred by the United States Constitution and cannot be abrogated by statute.

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[1] The complaint stated: "The warrant serves as a detainer against petitioner and will presumably be *executed* by the Metropolitan Police (Fugitive Squad) when petitioner has completed his present sentence." The implication intended, of course, was that petitioner would be detained by the respondents *on the basis of* this warrant.

(d) Article III, Section 2 of the United States Constitution [27] also provides that "The judicial power shall extend to all cases, in law and equity, arising under this Constitution." In the instant action petitioner seeks to have construed, *inter alia,* the force and effect of Article IV, Section 2 of the United States Constitution, which provides for interstate extradition of fugitives in cases where an accused has fled the jurisdiction of the demanding state. The jurisdiction of this court is thus doubly secured.

III

(a) The Motion to Dismiss incorrectly alleges that "petition fails to state a claim upon which relief can be granted."

(b) None of the cases cited under Paragraph II of the Motion to Dismiss are analagous to the instant case; hence they are not applicable or controlling. The case of *Hale* v. *Crawford* (65 Fed. 2d 739, cert. den. 290 U. S. 274) establishes only that "validity of state statutes and of procedure of the courts of states pertaining to trial will not be questioned in courts of the asylum state." In the instant action petitioner is not raising the validity of New York statutes or of the procedure of its courts pertaining to trial, but rather seeks to have this Court construe the United States Constitution as it appertains to the set of facts in the instant case: viz, since interstate extradition is based upon Article IV, Section 2 of the United States Constitution (which provides for extradition only when an accused has *fled* the jurisdiction of the demanding state) whether or not the petitioner can be detained and extradited to New York to face prosecution on an indictment, after having been in the custody of the State of New York in connection with the said indictment and then released by New York to be *forcibly removed, against his will and consent,* to another jurisdiction.

(c) The Motion to Dismiss alleges that relief cannot be had under the Sixth Amendment, but does not deny that petitioner has been denied "due process of law" under the Fifth and Fourteenth Amendments.

(d) In conclusion the Motion to Dismiss cites the case of *Ponzi* v. *Fessenden* (258 U. S. 254), contending that petitioner "may not complain if one sovereignty waives its strict right to exclusive custody of him for vindication of its laws in order that the other may also subject him to conviction of crime against it." The *Ponzi* case, however, [28] is not analagous or controlling, since it was based upon an altogether different set of facts and conditions and is entirely foreign to the instant case in the legal principles and precedents involved. There is no precedent whatsoever in law for the apprehension, detention and extradition of an accused under the conditions existing in the instant case, said conditions having been set forth in the original complaint and being unrefuted by the respondents. The respondents' assertion that petition fails to state a claim upon which relief can be granted is groundless.

IV

(a) Petitioner has been unable both in drawing his initial pleading and this "Opposition to Motion to Dismiss" to adequately or effectively represent himself and his cause, because of his confinement, lack of legal training, poverty, and dearth of facilities for preparing legal pleadings. Motion to appoint counsel, which was filed with the original complaint in this case, is hereby renewed. Petitioner believes it would be reversible error for the Court to find for the respondents without having first assigned counsel to represent petitioner, especially in view of the fact that petitioner is prosecuting this action *in forma pauperis* and has made repeated requests for the assignment of counsel.

WHEREFORE, having fully answered the Motion to Dismiss which was filed on December 6, 1948, on behalf of the respondents Robert J. Barrett and Curtis Reid, by the Corporation Counsel for the District of Columbia, petitioner prays that said motion be denied.

* * * * * * *

[32] Filed Jan. 3, 1949. Harry M. Hull, Clerk.

Order Assigning Counsel

Upon consideration of the request of the plaintiff, Jay Paul Shelton, for the appointment of counsel to represent him, it is this 3rd day of January, 1949,

Ordered that Nicholas J. Chase is hereby requested to represent Jay Paul Shelton in these proceedings.

* * * * * * *

[35] Filed Mar. 25, 1949. Harry M. Hull, Clerk.

Order

Upon consideration of motions to dismiss filed herein by defendants Robert J. Barrett and Curtis Reid, together with points and authorities in support of and in opposition thereto, and upon oral argument of the said motions, it is

Adjudged, ordered, and decreed, That the motions to dismiss filed herein on behalf of the defendants Robert J. Barrett and Curtis Reid be, and are hereby, granted, and that the complaint be, and is hereby, dismissed as to the defendants Robert J. Barrett and Curtis Reid.

* * * * * * *

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 859372 242